

Remarks

These Remarks are in reply to the Office action mailed on January 25, 2006. Claims 1-32 are presented herewith for consideration.

Objection to the Claims

Claims 3, 4, 8 and 12-14 have been objected to for including informalities. In particular, the Examiner has objected to the inclusion of the word “the” before claim terms as being grammatically incorrect.

Applicant has carefully reviewed the claims and respectfully submits that the claims as written contain no such grammatical errors. In Claims 3, 4 and 8, the claims recite in part, “...wherein the mentoring the user is capable of receiving in the mentoring opportunity is...” The use of the article “the” before “mentoring” is proper, as it indicates that the mentoring recited in Claims 3, 4 and 8 is the mentoring defined in Claim 1.

Similarly, the Examiner indicated that the recitation “capable of receiving in the mentoring” in the Claim 8 recitation of, “wherein the mentoring the user is capable of receiving in the mentoring opportunity is an asynchronous event,” is grammatically incorrect. The Examiner indicated the phrase should read, “capable of receiving the mentoring.” Applicant respectfully disagrees. The claim is correct as written.

Finally, the Examiner indicated that the phrase, “mentoring the user upon the user,” in the recitation of, “the MetaMentor mentoring the user upon the user performing an action resulting in a poor result for the role-played character,” in Claims 12-14 is grammatically incorrect. Applicant respectfully disagrees. The claims are correct as written.

Based on the above, it is respectfully requested that the objection to Claims 3, 4, 8 and 12-14 be withdrawn.

Rejection Under 35 USC §103(a)

Claims 1 – 32 have been rejected under 35 USC §103(a) as being obvious over the combination of U.S. Patent Application Publication No. 2005/0137015 to Rogers (“Rogers”) in view of U.S. Patent Application Publication No. 2004/0121295 to Stuart et al. (“Stuart”) and further in view of U.S. Patent Application Publication No. 2002/0168621 to Cook et al. (“Cook”).

Rogers claims priority to a provisional patent application filed on August 19, 2003. The present invention was filed on October 29, 2003. Applicant therefore is filing herewith declarations under 37 C.F.R. §1.131 to show that the present invention was conceived of before the earliest possible filing date of Rogers, and respectfully requests that Rogers be removed as a prior art reference with respect to the present application.

As noted in the MPEP SECTION 706.02, a reference relied upon in a rejection may be removed as a prior art reference under 37 C.F.R. §1.131 upon showing prior invention by the applicant, provided the reference and the invention are not for the same invention. A Section 1.131 affidavit is proper in this instance because Rogers is directed to a role-playing game, where the current invention is related to a learning and education platform. These are not the same inventions.

Submitted herewith are:

- (1) Declaration of Patricia Franklin, setting forth facts establishing a date of invention prior to the priority date of August 19, 2003. This affidavit is hereby submitted under 37 C.F.R. §1.131 in order to overcome Rogers as a reference.
- (2) Declaration of Kenneth Ecklund, setting forth facts establishing a date of invention prior to the priority date of August 19, 2003. This affidavit is hereby submitted under 37 C.F.R. §1.131 in order to overcome Rogers as a reference.
- (3) Declaration of Fred Borchardt, setting forth facts establishing a date of invention prior to the priority date of August 19, 2003. This affidavit is hereby submitted under 37 C.F.R. §1.131 in order to overcome Rogers as a reference.

As set forth in the attached §1.131 Declarations, the invention recited in the claims of the present invention were conceived of earlier than the earliest possible date of Rogers as a prior art

reference, and the inventor was diligent from the date of conception to the reduction to practice of the invention, as evidenced by the filing of the present patent application on October 29, 2003 and the making of prototypes.

It is therefore respectfully requested that Rogers be removed as a prior art reference, and that the rejection of Claims 1-32 on Section 103 grounds in part based on Rogers be withdrawn.

Based on these remarks, reconsideration and allowance of Claims 1-32 is requested.

The Examiner's prompt attention to this matter is greatly appreciated. Should further questions remain, the Examiner is invited to contact the undersigned attorney by telephone.

Enclosed is a PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. § 1.136 for extending the time to respond up to and including today, May 24, 2006.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: May 24, 2006

By: 

Brian I. Marcus
Reg. No. 34,511

VIERRA MAGEN MARCUS & DENIRO LLP
575 Market Street, Suite 2500
San Francisco, CA 94105-4206
Telephone: (415) 369-9660
Facsimile: (415) 369-9665